

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

**MARIETTA HEALTHCARE, LLC, d/b/a MARIETTA NURSING
AND REHABILITATION CENTER**

EMPLOYER

and

CASE NO. 8-RC-16595

**SEIU DISTRICT 1199, THE HEALTHCARE AND SOCIAL SERVICE
WORKERS UNION, AFL-CIO**

PETITIONER

REPORT ON OBJECTIONS

Pursuant to a Stipulated Election Agreement approved by me on February 13, 2004, an election was held on March 11, 2004 among the employees in the following described unit:

All full-time and regular part-time employees, including state tested nursing assistants, dietary aides, dietary cooks, housekeepers, laundry employees, restorative aides, central supply employees, activities' aides, and maintenance employees employed by the Employer at its 117 Bartlett Street, Marietta, Ohio facility, excluding registered nurses (RN's), licensed practical nurses (LPN's), confidential employees, business and office clerical employees, guards and supervisors as defined in the Act.

The tally of ballots issued after the election shows that of approximately 80 eligible voters, 80 cast ballots, 58 of which were cast for and 21 against the Petitioner. There was one challenged ballot, a number insufficient to affect the outcome of the election.

Thereafter, the Employer filed timely Objections To Conduct Affecting The Results Of The Election, a copy of which was duly served upon the Petitioner. A copy of the Employer's Objections is attached.¹

Pursuant to Section 102.69 of the Board's Rules and Regulations, an investigation of the Objections has been conducted, and I make the following findings and conclusions.

¹ The petition was filed on February 3, 2004. I have considered only conduct occurring during the critical period, which begins on and includes the date of the filing of the petition and extends through the election. **The Ideal Electric and Manufacturing Company**, 134 NLRB 1275 (1961).

PREFATORY NOTE

I have concluded that the Employer's Objection Nos. 2 and 3 are without merit and therefore recommend that they be overruled.

I have further determined that the Employer's Objection No.1 raises issues of fact and credibility that cannot be resolved by an *ex parte* proceeding. Therefore, by separate document issued this date, I ordered that Objection No. 1 be resolved at hearing before a duly designated hearing officer.

THE OBJECTIONS

Objection No. 2

Objection No. 2 alleges that the Petitioner sent or otherwise provided eligible voters with a letter to the Employer written by U.S Congressman for the 6th District of Ohio, Ted Strickland. The Employer contends that the letter from Representative Strickland interfered with the laboratory conditions for the holding of a free and fair election.

A copy of the correspondence the Employer finds objectionable is attached to its objection as Exhibit A. The correspondence, dated February 24, 2004, is addressed to Employer Administrator Brian McBee. The Employer submitted affidavit testimony in support of this objection from witnesses who assert that the Petitioner improperly used Congressman Strickland's letter as campaign propaganda during the election campaign.²

In the letter Congressman Strickland expressed his "...wholehearted support for the bargaining unit employees' decision to join the Petitioner." He described the Petitioner "...as an effective advocate for its members and all the programs and services they provide." He concluded by stating:

I believe to form a union rightly belongs to employees, and that they should be free to make their choice without outside interference. As I am sure you will agree, nursing home dollars are too precious to spend opposing employees' decisions to organize. I encourage you to partner with SEIU in the campaign to increase funding and improve nursing home jobs. By joining with SEIU, Ohio long-term care residents, their families and workers have everything to gain.

Contrary to the arguments raised by the Employer, I do not find that this correspondence upset the laboratory conditions of the election and constitutes grounds for setting aside this election. Rather, I conclude that the letter's contents amount to the opinions of an individual member of Congress which employees are free to accept or reject and which employees will not take to be endorsements of the Petitioner by the Federal Government, the Board, or its

² Based upon the affidavit testimony presented by the Employer in support of the objection, it appears that the correspondence was sent to employees approximately one and one half to two weeks prior to the date of the election.

representatives. See **Saint-Gobain Abrasives, Inc., 337 NLRB 82 (2001)** and **Chipman Union, Inc., 316 NLRB 107 (1995)**, and the cases cited therein.

I therefore find the Employer's Objection No. 2 to be without merit, and I shall recommend that it be overruled.

Objection No. 3

Objection No. 3 alleges that during the critical period the Petitioner's agents and/or individuals identified with the Petitioner pressured and coerced employees to support the Union.

In support of this objection, the Employer submitted a statement from the Employer's LPN Unit Manager, Laura M. Deuley. Deuley testified that on or about March 7, 2004, a bargaining unit employee employed as an STNA/Nurses Aid reported to her that certain employees who supported the Petitioner were pressuring that employee and two other employees because they did not support the Petitioner. Deuley testified that she spoke to the three employees who believed they were being pressured. The employees complained that two other employees were "nit-picking" and pressuring them.

Since the alleged objectionable conduct involves employees, and not agents of the Union, I shall evaluate this issue under the third party conduct standard. Under this standard, conduct by employees must be so egregious as to create a general atmosphere of fear and coercion before the election will be set aside. **Cal-West Periodicals, Inc., 330 NLRB 599 (2000)**; **Westwood Horizon Hotel, 270 NLRB 802 (1984)**. Clearly, unspecified "pressuring" and "nit-picking" by employees does not warrant setting aside the election. Accordingly, I shall recommend that Objection 3 be overruled.

CONCLUSIONS AND RECOMMENDATIONS

I conclude that the Employer Objections Nos. 2 and 3 do not raise substantial and material issues of fact or law with respect to the election in this matter and are without merit. I therefore recommend that the Employer's Objections Nos. 2 and 3 be overruled.

Dated at Cleveland, Ohio this 26th day of April, 2004.³

Frederick J. Calatrello, Regional Director
National Labor Relations Board
Region 8

Attachments

³ Under the provisions of section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Exceptions must be received by the Board in Washington by May 10, 2004.